

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

Plaintiff,

vs.

S. K. FOOD & GAS, INC.,

Defendant.

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LAW NO. _____

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources ("DNR") and for its claims against S. K. Food & Gas, Inc. ("S. K.") states as follows:

Introduction

1. The release of petroleum from underground storage tanks ("USTs") is a substantial public concern because it threatens public health and safety and the natural resources of the state. S. K. violated petroleum UST requirements at a retail gasoline facility located at 1511 W. Locust Street in Davenport, Scott County, Iowa, by failing to protect metal flex connectors in contact with the ground from corrosion, internally inspect USTs, test the UST cathodic corrosion protection system, maintain records of the operation of the cathodic protection system, monitor the USTs at least every 30 days, or use monthly inventory controls, to detect petroleum releases, and maintain leak detection records. The State of Iowa, therefore, brings this action seeking assessment of a civil penalty and issuance of a permanent injunction against S. K.

Parties

2. The State of Iowa is a sovereign state of the United States of America and brings this action on behalf of the DNR, a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2 (2005).

3. S. K. Food & Gas, Inc. is an Iowa corporation, and owns and operates a retail gasoline facility located at 1511 W. Locust Street in Davenport, Scott County, Iowa.

Jurisdiction

4. The DNR is authorized to regulate underground storage tanks (“USTs”) containing regulated substances, including petroleum products, and to adopt rules relating to detection, prevention and correction of releases of regulated substances from such tanks. Iowa Code §§ 455B.471-479.

5. The Environmental Protection Commission (“EPC”) is authorized to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTs. Iowa Code § 455B.474. The UST rules adopted by the EPC are contained in 567 Iowa Admin. Code chapters 135 and 136.

6. An “owner” of a UST is a person who owns the UST used for the storage, use, or dispensing of petroleum products. *See* Iowa Code § 455B.471(6)(a); 567 Iowa Admin. Code 135.2.

7. An “operator” of a UST is a person in control of, or having responsibility for, the daily operation of the UST. Iowa Code § 455B.471(5); 567 Iowa Admin. Code 135.2.

8. Piping in a UST system that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion. 567 Iowa Admin. Code 135.3(1)“b”.

9. Within ten years after lining USTs to comply with DNR upgrade requirements, and every five years thereafter, the lined USTs are to be internally inspected to determine if the USTs remain structurally sound with the lining still performing in accordance with original design specifications. 567 Iowa Admin. Code 135.3(2)“b”(1).

10. “*Cathodic protection*” is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. 567 Iowa Admin. Code 135.2.

11. All owners and operators of steel UST systems with cathodic corrosion protection systems must test all systems within six months of installation and at least every three years thereafter or according to another reasonable time frame established by the DNR. Records of the operation of the cathodic protection must be maintained to demonstrate compliance with DNR performance standards. 567 Iowa Admin. Code 135.4(2).

12. Owners and operators of petroleum UST systems must monitor the USTs at least every 30 days, or use monthly inventory controls, for detection of petroleum releases. 567 Iowa Admin. Code 135.5(2)”a”.

13. Owners and operators of petroleum UST systems must monitor pressurized underground UST piping that routinely contains regulated substances with an automatic line leak detector, and an annual line tightness test, or by monthly monitoring. 567 Iowa Admin. Code 135.5(2)”b”.

14. All UST system owners and operators must maintain records demonstrating (1) all written manufacturer or installer performance claims pertaining to any release detection system used, (2) the results of any UST sampling, testing, or monitoring; and (3) written documentation of all calibration, maintenance, and repair of release detection equipment. 567 Iowa Admin. Code 135.5(6).

15. Owners and operators must maintain records that include documentation of operation of corrosion protection equipment, UST system repairs, and recent compliance with release detection requirements. Owners and operators must maintain records at the UST site, or at a readily available

alternative site, and make the records available to the DNR for inspection upon request. 567 Iowa Admin. Code 135.4(5)“b”-“c”.

16. A person who violates a provision of Iowa Code chapter 455B, Division IV, part 8, or rule or order issued thereunder is subject to a civil penalty not to exceed five thousand dollars (\$5,000.00) for each day during which the violation continues. Iowa Code § 455B.477(1).

17. The Attorney General, at the request of the DNR director with approval of the EPC, shall institute any legal proceedings, including an action for injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division IV, part 8, or to obtain compliance with the provisions of said part or the rules or orders issued thereunder. Iowa Code § 455B.477(3).

Facts

18. S. K. acquired ownership of property located at 1511 W. Locust St., Davenport, Scott County, Iowa, on December 17, 2003, from Wisconsin North, LLC. Wisconsin North previously purchased the property from Clark Refining in 1998. This property contained a gas station with a petroleum UST system including three active USTs (two 6,000-gallon tanks, and one 10,000-gallon tank).

19. S. K. has been the owner and operator of the USTs since December 17, 2003.

20. On February 10, 2005, a DNR inspector, Terry Jones, conducted a UST inspection at the S. K. site, and requested to review S. K.'s records concerning the most recent internal lining inspection for the two 6,000-gallon USTs, the most recent cathodic protection evaluation for the 10,000-gallon UST, 12-months of monthly release detection records from the automatic tank gauge (ATG) leak detection system, and the most recent annual product line and leak detector tests. The records were not available on-site, and S. K. was given until February 15, 2005, to produce the records. The requested records were never produced.

21. On February 16, 2005, Jones revisited the S. K. site and again requested to view the UST records. S. K. was unable to produce the records.

22. During the February 16, 2005 inspection, Jones observed metal flex connectors in contact with soils in submersible sump pits that were not protected against corrosion.

23. On February 16, 2005, a contractor hired by S. K., PIPECO, Inc., discovered S. K.'s automatic line leak detectors did not work, and replaced the leak detectors. PIPECO, Inc. also tested the pressurized UST lines for leaks, and the lines passed the inspection.

24. In a February 22, 2005 letter, the DNR directed S. K. to perform the required testing, monitoring, and documentation that was not completed at the time of the February 10 and February 16 inspections. In a detailed Inspection Report attached to the letter, the DNR directed S. K., in part, to perform the following:

- a. perform internal inspections of the two 6,000-gallon USTs, and cathodic protection testing for the 10,000-gallon UST, no later than April 1, 2005;
- b. give written notification to the DNR by March 20, 2005, that the metal flex connectors on the UST piping are protected against corrosion;
- c. provide to the DNR no later than March 20, 2005, results of UST precision leak detection testing; and
- d. retain all required UST records.

25. The DNR required internal inspections of the two lined USTs because S. K. could not produce evidence of when the internal lining was installed in the USTs. Records at the DNR demonstrate that on December 22, 1998, the former owners of the USTs, Wisconsin North, LLC, provided a UST registration form to the DNR stating the two 6,000-gallon USTs were internally lined during the ownership of the prior owners, Clark Refining. On information and belief, the USTs

were internally lined by Clark Refining over ten years prior to the date of Jones' February 10, 2005 inspection.

26. On March 15, 2005, another contractor hired by S. K., Tanknology, conducted an internal inspection and a tank tightness test for one 6,000-gallon UST, and the 10,000-gallon UST. The internal lining of the 6,000-gallon UST passed inspection, and both tanks passed the tightness test. No internal lining was required for the 10,000-gallon UST.

27. On April 16, 2005, Tanknology conducted an internal inspection and a tank tightness test for the remaining 6,000-gallon UST. The UST lining failed the inspection, but satisfied the tank tightness test.

28. On June 9, 2005, a Jones again inspected the S. K. facility, and S. K. provided him with the results of a June 6, 2005, release detection test for the USTs demonstrating they were operating properly.

29. In a June 21, 2005 letter, the DNR directed S. K. to repair the lining of the UST that failed the internal inspection, discontinue use of the UST until repairs are completed, and provide a report of the repairs to the DNR no later than August 1, 2005. The DNR also required the metal flex joints be immediately protected from corrosion, tested for adequate protection, and that the test results be provided to the DNR no later than August 1, 2005. The letter acknowledged the 10,000-gallon UST passed a cathodic protection test on April 21, 2005.

30. On August 23, 2005, S. K. has since submitted information to the DNR demonstrating Central Petroleum Equipment Company (CPEC) installed and tested spike anodes on the dispenser flex connectors on July 4, 2004, and Tank Tech relined the second 6,000-gallon tank in August 2005.

31. On August 25, 2005, the DNR sent a letter to S. K. noting the submersible pump flex connectors were not yet protected from corrosion, and required verification of the protection be submitted by September 25, 2005.

32. A September 13, 2005 letter from S. K.'s attorney informed the DNR that corrosion protection was installed on the remaining flex joints on September 9, 2005.

Violations

33. Prior to September 9, 2005, S. K. failed to protect metal flex connectors in contact with the ground from corrosion in violation of 567 Iowa Admin. Code 135.3(1)"b".

34. Prior to April 16, 2005, S. K. failed to internally inspect USTs in violation of 567 Iowa Admin. Code 135.3(2)"b"(1).

35. Prior to April 21, 2005, S. K. failed to test the UST cathodic corrosion protection system in violation of 567 Iowa Admin. Code 135.4(2).

36. Prior to April 21, 2005, S. K. failed to maintain records of the operation of the cathodic protection system in violation of 567 Iowa Admin. Code 135.4(2).

37. Prior to June 6, 2005, S. K. failed to monitor the USTs at least every 30 days, or use monthly inventory controls, to detect petroleum releases in violation of 567 Iowa Admin. Code 135.5(2)"a".

38. Prior to February 16, 2005, S. K. failed to monitor pressurized underground UST piping with an automatic line leak detector, and an annual line tightness test, or by monthly monitoring in violation of 567 Iowa Admin. Code 135.5(2)"b".

39. Prior to February 16, 2005, S. K. failed to maintain leak detection records in violation of 567 Iowa Admin. Code 135.4(5)"b"- "c" and 135.5(6).

WHEREFORE, Plaintiff State of Iowa ex rel., Iowa Department of Natural Resources requests the Court:

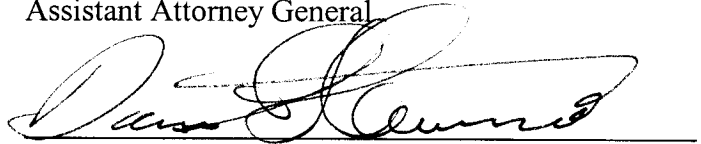
- a. assess a civil penalty against S. K. pursuant to Iowa Code section 455B.477(1) (2005) for each day of violation of 567 Iowa Admin. Code 135.3(1)"b", 135.3(2)"b"(1), 135.4(2), 135.4(5)"b"- "c", 135.5(2)"a", 135.5(2)"b" and 135.5(6) not to exceed five thousand dollars (\$5,000) for each day of violation; and
- b. issue an order permanently enjoining S. K. from any further violation of 567 Iowa Admin. Code 135.3(1)"b", 135.3(2)"b"(1), 135.4(2), 135.4(5)"b"- "c", 135.5(2)"a", 135.5(2)"b" and 135.5(6).

Plaintiff further requests such other relief the Court may deem just and proper and that the Court tax the costs of this action to S. K.

Respectfully submitted,

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